



Signed and Filed: March 13, 2008

A handwritten signature in dark ink, appearing to read "T. E. Carlson", is written over a horizontal line.

THOMAS E. CARLSON
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re)	Case No. 07-31379 TEC
)	
ISLAMIC SOCIETY OF SAN FRANCISCO,)	Chapter 11
a California nonprofit corporation,)	
)	
Debtor.)	
)	
SAVE AL-HUDA SCHOOL FOUNDATION,)	Adv. Proc. No. 07-3142 TC
a California nonprofit corporation,)	
)	
Plaintiff,)	
)	
vs.)	
)	
ISLAMIC SOCIETY OF SAN FRANCISCO,)	
a California nonprofit corporation,)	
)	
Defendant.)	

MEMORANDUM DECISION RE DEBTOR'S MOTION FOR SUMMARY JUDGMENT

On March 7, 2008, this court held a hearing on Debtor's motion for summary judgment. Debtor seeks a determination that it does not hold the Al-Huda School property as a trustee, but has equitable as well as legal title. Iain A. Macdonald and Heather A. Cutler appeared for Debtor. H. Paul Bryant appeared for Plaintiff Save Al-Huda School Foundation, Inc. (hereinafter SAHSFI). Upon

1 due consideration, and for the reasons stated below, the court
2 determines that there is a genuine issue of material fact as to
3 whether Debtor holds the school property in trust, and the motion
4 for summary judgment is therefore denied.

5 Legal title is held by Debtor. This creates a presumption of
6 equitable ownership that can be rebutted only by clear and
7 convincing evidence. Cal. Evid. Code § 662.

8 The Al-Huda Islamic School is not incorporated and appears to
9 be a division of Debtor ISSF. The bylaws of the school state
10 "[a]ll assets of Al-Huda Islamic School shall be considered
11 property of the Islamic Society of San Francisco." These bylaws
12 are thus consistent with the record title held by Debtor.

13 Property transferred to a charitable corporation may be held
14 in trust by that corporation for purposes more limited than the
15 stated purposes of the charitable corporation. Bogert's Trusts and
16 Trustees § 324; Witkin, Summary of California Law, Trusts § 293;
17 Estate of Henderson, 17 Cal. 2d 853, 856-59 (1941); Cal. Corp. Code
18 § 9142(a). The principal question in this case is whether Debtor
19 holds the school property in trust solely for use as a school, or
20 whether Debtor has full beneficial ownership and may use the school
21 property in furtherance of any of its charitable purposes,
22 including payment of its debts.

23 Debtor is a religious, non-profit corporation. Under section
24 9142(c) of the California Corporations Code, property of a
25 religious corporation will be "deemed to be impressed with any
26 trust, express or implied" only to the extent such trust is
27 expressly provided for in: (1) a resolution of the board of
28 directors; (2) the articles or bylaws of the corporation or the

1 governing instruments of a "superior religious body or general
2 church;" or (3) in a written statement by the donor at the time of
3 the donation.

4 One declaration of trust sufficient to meet the requirements
5 of section 9142(c) is in Article X, Section 5 of Debtor's
6 Constitution (bylaws), which states: "Any property of the ISSF
7 shall be entrusted with the NAIT (North American Islamic Trust)."

8 Plaintiff also submitted evidence that the Executive
9 Committee, Advisory Board, and general membership of ISSF adopted a
10 resolution expressly committing to hold the school property in
11 trust for the purpose of providing an Islamic school for the
12 members of the Bay Area Islamic community. Declaration of Abdullah
13 Alawdi at ¶¶ 3, 5, 7; Declaration of Anise Kaddoura at ¶ 9 and
14 Exhibit D thereto. This evidence is sufficient to create a triable
15 issue of fact as to whether there was a declaration of trust
16 sufficient under section 9142(c)(1).

17 It appears that at least some of the members of SAHSFI have
18 standing to enforce the alleged trust. At least some SAHSFI
19 members, as parents in the Bay Area Islamic community who want to
20 send their children to the Al-Huda School, are beneficiaries of the
21 alleged trust and are therefore entitled to bring suit to enforce
22 that trust under section 9142(a)(4).

23 Debtor has not established undisputed facts sufficient to
24 permit the court to apply the *cy pres* doctrine to permit sale of
25 the school property. The evidence submitted does not establish
26 that operation of the school is permanently impossible or
27 impractical. See Witkin, Summary of California Law, Trusts § 304.
28 Furthermore, Debtor's argument for selling the school property is

1 based at least in part on Debtor's need to pay its debts. It is
2 not clear whether those debts arose in the course of administration
3 of the alleged trust (the school), as opposed to Debtor's other
4 activities, and it is therefore unclear whether those debts are
5 properly charged to the alleged trust res. See Cal. Probate Code
6 § 18004. Sale of the school property to pay debts unrelated to the
7 school would be in derogation of the alleged trust, not to preserve
8 the intent of the alleged trust, and could not be justified through
9 the *cy pres* doctrine.

10 Although the court discussed in its tentative ruling possible
11 revocation of the alleged trust, Debtor did not raise that argument
12 and did not submit any evidence that Debtor had in fact purported
13 to revoke the trust. Revocation is thus not a proper basis for
14 granting Debtor's motion for summary judgment.

15 ****END OF MEMORANDUM DECISION****
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Court Service List

Iain A. Macdonald, Esq.
Macdonald and Associates
221 Sansome Street
San Francisco, CA 94104

Julie M. Glosson, Esq.
Office of the United States Trustee
235 Pine Street, Suite 800
San Francisco, CA 94104

H. Paul Bryant, Esq.
Law Offices of H. Paul Bryant
725 Washington Street, Suite 725
Oakland, CA 94607

H. Christopher Hittig, Esq.
Law Offices of H. Christopher Hittig
44 Montgomery Street, Suite 3780
San Francisco, CA 94104

Robert F. Kane, Esq.
Law Offices of Robert F. Kane
870 Market Street, Suite 1128
San Francisco, CA 94102